

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3298 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

EAGLE CEMENT PIPES AND CONCRETE WORKS THROUGH PARTNER

Versus

STATE OF GUJARAT

Appearance:

MR ASHIN H DESAI for Petitioner

MR BY MANDKAD, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/07/98

ORAL JUDGEMENT

Rule. In the facts and circumstances of the case the matter is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the petitioner-firm has challenged the order of the State Government as communicated through the letter dated 3.4.1998 from the Collector, Junagadh to the petitioner rejecting the petitioner's request for permitting the petitioner to convert the user of the land

from industrial to commercial.

The petitioner was granted the land at GIDC, Junagadh on permanent basis. The petitioner had paid the price as was determined by the Collector when the land was granted to the petitioner in the year 1972. Thereafter in the year 1984, the petitioner applied to the Collector for permitting the petitioner to construct a small structure on the land in question so that it can be let out to the State Bank of India. That application dated 30.7.1984 was rejected by the Collector on 3.10.1984 and the petitioner challenged that order before the State Government. Since the Government also rejected the revision application, the petitioner filed Special Civil Application No. 6124 of 1985. That petition was allowed by this Court on 23.10.1996 by quashing the aforesaid decision and directing the respondents to take a fresh decision after hearing the petitioner.

In view of the aforesaid decision of this Court, respondent No. 2 gave notice dated 17.2.1997 (Annexure "E" to the petition) giving the petitioner an opportunity of being heard. The petitioner, therefore, submitted its written representation (Annexure "E-1") pointing out the relevant facts. It appears that the Collector, Junagadh forwarded the same to the State Government in the Revenue Department and by its letter dated 28.1.1998, the State Government informed the Collector that the petitioner's request was rejected. That was in turn communicated by the Collector to the petitioner by the impugned letter dated 3.4.1998 at Annexure "A" to the petition. Hence, the petitioner has approached this Court for challenging the aforesaid decision of the State Government as communicated by the Collector.

3. In response to the notice issued by this Court, Mr Mankad, learned AGP has appeared for the respondents and has submitted that since the land was in the industrial zone, the authorities have rejected the petitioner's request for permission to use it for commercial purpose.

4. The learned counsel for the petitioner has submitted that out of the total land admeasuring 7 Acres and 31 Gunthas granted to the petitioner, the petitioner wanted to put up construction only on the land admeasuring 836.10 sq.mtrs. for the purpose of letting it out to a bank and to open a shop. Hence, what the petitioner was asking for was permission to use less than 1/10th of the total land for commercial purposes so that opening of a public sector bank would enure the benefit

of all the industries in the area. It is further submitted by the learned counsel for the petitioner that the petitioner has also informed the respondents that over and above opening of a public sector bank, the petitioner also wanted to open a shop for lathe machine works or such ancillary activity of the petitioner's industry manufacturing cement pipes and allied products. He has further submitted that in case any amount is required to be paid by the petitioner under any relevant Government Resolutions or Circulars for change of user, the petitioner is prepared to pay the same to the authorities.

6. In fact, in any industrial area, the industrialists as well as the other concerend persons definitely require the services of a bank and, therefore, the purpose for which the petitioner had sought permission cannot be said to be inconsistent with industrial purpose.

It is, therefore, clear that the respondents have not taken into account the aforesaid vital and relevant consideration and have mechanically rejected the petitioner's application. Moreover, in view of the readiness and willingness expressed on behalf of the petitioner that even if the aforesaid demand amounts to a request for permission for change of purpose from industrial to commercial, then the petitioner is prepared to pay the necessary amounts to the authorities as per the relevant Government Resolutions and Circulars, this is a case where the respondent-authorities are required to take a positive, constructive and responsive approach.

7. In view of the above, the petition is allowed. The decision dated 28.1.1998 of the State Government as communicated through the Collector by his letter dated 3.4.1998 at Annexure "A" is hereby quashed and set aside. Respondent No. 1-State Government is directed to decide the petitioner's application afresh in light of the observations made in this judgment, as expeditiously as possible but in any case within two months from the date of receipt of a certified copy of this judgment.

8. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

July 17, 1998 (M.S. Shah, J.)